

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

Notice CPD-99-1

Field CPD Division Directors for:

Arizona State Office

California State Office

New Mexico State Office

Texas State Office

Los Angeles Area Office

San Antonio Area Office

HUD Colonias Initiative Grantees

Issued: January 27, 1999

Expires: January 27, 2000

Cross References: HCI NOFA (July 15, 1998)

Subject: Field Environmental Review Processing for HUD Colonias Initiative (HCI) Grants

I. Introduction

A. Purpose

This notice provides direction for field environmental review processing as set forth in paragraph II(N) of the notice of funding availability (63 FR 38251, July 15, 1998, at page 38255) for the HUD Colonias Initiative Program in the four border States where colonias are found: Texas, Arizona, New Mexico, and California. This notice directs certain field office CPD Division Directors to perform the environmental review processing for any HCI projects located within their HUD field office jurisdiction. These field CPD Division Directors shall direct their staff to conduct the environmental review in accordance with 24 CFR Part 50--Protection and Enhancement of Environmental Quality. HCI grantees must supply field CPD Division Directors with information that would help HUD complete the, environmental review procedure under 24 CFR Part 50. The notice defines the information to be provided by HCI grantees to HUD (see Protocol -- **Appendix A**).

B. Background

The FY 1998 HUD Appropriations Act provided funding to test comprehensive approaches to developing a job base through economic development, developing affordable low- and moderate-income rental and homeownership housing, and increasing the investment of both private and nonprofit capital in rural and tribal areas. A percentage of the funding has been targeted for support assistance to organizations administering projects to address the housing needs of colonias residents in rural areas.

DGBS: Distribution: W-3-1

C. Authority

The authority for environmental review of HUD-assisted projects and activities carried out by HCI is the National Environmental Policy Act (NIEPA), the implementing regulations of the Council on Environmental Quality, and the Department's regulations at 24 CFR part 50--Protection and Enhancement of Environmental Quality. The FY 1998 HUD Appropriations Act did not provide for assumption authority to allow States and units of general local government to perform HUD's environmental review responsibility; therefore the use of 24 CFR Part 58 procedures is not authorized.

II. Basic environmental requirement

A. Activities subject to environmental review

The environmental review requirements are stated in the NOFA as follows:

" (N) Environmental Review

Selection for award does not constitute approval of any proposed sites. Following selection for award, HUD will perform an environmental review of activities proposed for assistance under this part, in accordance with 24 CFR part 50. The results of the environmental review may require that proposed activities be modified or that proposed sites be rejected. Applicants are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties prior to HUD approval of specific properties or areas. Each application shall contain an assurance that the applicant will assist HUD to comply with part 50; will supply HUD with all available, relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, lease, repair or construct property, nor commit HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received."

Under 24 CFR 50.3(h), grantees must not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or nonfederal funds for these program

activities with respect to any eligible property, until the grantee receives HUD environmental approval of the property, from the CPD Division Director in the field office in which the HCI project is located.

The term "local funds" refers to any nonfederal funds. The term "HUD approval" means approval by the CPD Division Director in the HUD field office jurisdiction in which the HCI project is located.

B. Activities not subject to environmental review

Sec. 50.19(b) lists the activities that do not require environmental review under the National Environmental Policy Act (NEPA) except in extraordinary circumstances (50.20(b)) or under the other laws and authorities cited at 50.4. Grantees may commit and expend funds for these activities, which are not subject to environmental review (except as noted below):

- (1) environmental and other studies, resource identification and the development of plans and strategies;
- (2) Information and financial advisory services;
- (3) Administrative and management expenses;
- (4) Public services that will **not** have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- (5) Inspections and testing of properties for hazards or defects;
- (6) Purchase of insurance;
- (7) Purchase of tools;
- (8) Engineering or design costs;
- (9) Technical assistance and training;
- (10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

- (11) Tenant-based rental assistance;
- (12) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
- (13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs; however, in the case of equipment, compliance with 50.4(b)(1) is required;
- (14) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or physical expansion of existing facilities; however, in the case of equipment purchase, compliance with 50.4(b)(1) is required.
- (15) Activities to assist homeownership of existing dwelling units, including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property; however, compliance with 50.4(b)(1) and (c)(1) and 51.303(a)(3) is required.
- (16) Housing pre-development costs including legal, consulting, developer and other costs related to site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

III. Responsibilities

A. Office of Block Grant Assistance responsibilities

The OBGA Director shall:

- (1) make certain that the environmental assurance as set forth in the NOFA is contained in the application accepted for grant processing;
- (2) assure that the project agreement contains the following items:
 - (a) the environmental procedures specified in the NOFA with explicit warning that HCI grantees are not to acquire, rehabilitate, convert, lease, repair or construct property, nor commit HUD or nonfederal funds for these HCI program activities with respect to any eligible property, until HUD environmental approval of the property is received from the field CPD Division Director;
 - (b) an appendix containing this Notice;

(c) the name, address, phone, and FAX numbers of the field CPD Division Director to whom the HCI grantees must supply the environmental information and from whom the grantees obtain environmental approval of the project; and

(d) a schedule requirement for the grantee's submission of environmental information to the field CPD Division Director as set forth in this Notice.

(3) provide to each field CPD Division Director a list of HCI grantees for whom he/she is responsible for carrying out this notice; and

(4) provide support and oversight for effective implementation of this notice.

B. Grantee's environmental responsibility

HCI grantees shall:

(1) provide an environmental assurance in their application for HCI grants;

(2) supply the field CPD Division Director with all available, relevant information necessary for HUD to perform environmental reviews required under 24 CFR Part 50;

(3) carry out mitigating measures required by HUD or select alternate eligible property;

(4) not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or nonfederal funds for these program activities with respect to any eligible property, until HUD environmental approval of the property is received from the field CPD Division Director; and

(5) aggregate activities into a single group in order that the HUD environmental review and approval may be completed under a single evaluation by the field office in whose jurisdiction the project is located.

To achieve time savings and effective delivery of information to the HUD Field CPD Division Director, HCI grantees are encouraged to use e-mail or FAX in communicating with the HUD field staff responsible for performing environmental processing for their projects under this notice.

C. HUD Field Office CPD Director and staff responsibilities

The Field Office CPD Division Director shall serve as the "HUD approving official" as defined in 50.2 for HCI grants located within the HUD field office jurisdiction. The responsibilities of the CPD Division Director and staff are stated in **Appendix C**.

IV. Other

A. Use of prior environmental assessments

When other Federal, State, or local agencies have prepared an environmental assessment or other environmental analysis for a property (or neighborhood) which the grantee had selected for use in its HCI program, these documents should be requested and used to the extent possible (see 50.35). Council on Environmental Quality (CEQ) regulations at 40 CFR 1506.5(a) require HUD to independently evaluate environmental information submitted by the grantee and be responsible for its accuracy, as well as to verify (but not redo) acceptable work.

B. Environmental consultant and administrative costs

HCI grantee's administrative funds may be used to obtain the information that the grantees are responsible for supplying to the HUD Field Office under this notice. There is no requirement for an environmental compliance review for the use of these funds for such purpose. Sec. 50.19(b)(1) and (3) respectively exclude from environmental review procedures both "environmental and other studies" as well as "administrative and management costs." This exclusion extends to the costs of environmental consultants engaged by the grantee and/or payments to local governments for this service.

C. Suggested "time-savers"

To save time and effectively deliver information to HUD, grantees are encouraged to use e-mail or FAX in communicating with the HUD Field Office staff responsible for performing the environmental processing under this notice.

PROTOCOL

This protocol defines the information to be supplied by grantees to the HUD field office for the HUD Colonias Initiative Program in accord with the grantee's environmental assurance and the project agreement. The grantee's information will help HUD to complete the environmental review processing required by 24 CFR Part 50--Protection and Enhancement of Environmental Quality. Grantees must not acquire, rehabilitate, convert, lease, repair or construct property, nor commit HUD or nonfederal funds for these program activities with respect to any eligible property, until the grantee receives HUD environmental approval of the property from the CPD Division Director in the field office in which the HCI project is located. Where grantees propose more than one property, grantees are to aggregate properties into a single group (or even a neighborhood area) so that the HUD environmental review and approval may be completed under a single evaluation by the HUD field office. The protocol provides specific questions for the grantee to answer for each property proposed for the HCI project. In addition, the protocol provides resources related to each question. These questions should be applied to an entire neighborhood area if the grantee proposes to use the funds to benefit the neighborhood area.

Questions

- #1 Is the property located within designated coastal barrier resources?
- #2 Is the property contaminated by toxic chemicals or radioactive materials?
- #3 Is the property located within a flood hazard area or designated wetland?
- #4 Is the property within an area requiring flood insurance protection?
- #5 Is the property located within an airport runway clear zone?
- #6 Is the property listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, an historic district, or is a property whose area of potential effect includes a historic district or property?
- #7 Is the property located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature?
- #8 Is the site noise-impacted?
- #9 Is the project consistent with the coastal zone management plan?
- #10 Does the project affect a sole source aquifer?

#11 Does the project affect endangered species?

#12 Does the project affect listed wild and scenic rivers?

#13 Does the project affect prime and unique farmland, or other farmland of statewide or local significance?

#14 Is the project located within a "non-attainment" or "maintenance" area identified in the air quality State Implementation Plan?

#15 Is the project located in a neighborhood or community where the proposed action is likely to raise environmental justice issues?

#16 Does the grantee propose: (i) acquisition of land for development of more than four one-to-four family dwellings, or of five or more units of housing where the housing sites are 2,000 feet or less apart; (ii) infrastructure; (iii) new construction other than for residential activities excluded under 50.20(a)(3); (iv) major rehabilitation of existing structures in accordance with 50.20(a)(2) that involves any of the following conditions: (a) in the case of residential buildings, an increase in the unit density of more than 20 percent; (b) changes in land use (from non-residential to residential or from residential to non-residential); or (c) estimated cost of rehabilitation that is 75 percent or more of the total estimated cost of replacement after rehabilitation-, or (v) any other activity not categorically excluded under 50.20(a)?

Resources for Supporting Documentation

Grantees may wish to contact their local or county planning agency or local community development agency, and request the agency's help in developing the information or have the agency staff prepare a letter with their answers (i.e., findings) to the above questions. Instead or in addition, grantees may wish to use HCI administrative funds to help pay for Responsible Entity (RE) staff services or private consultants who would obtain and supply the information or support grantees in supplying information to the HUD Field Office. Most of the information necessary to prepare the response to these questions is readily available to grantees from their local or county planning agency, local community development agency or building permit official.

The grantee's written response should include a city or county map that shows the location of the property or project area as well as photos showing the north, east, south, and west perspectives from the property or the project area, and the dates the photos were taken. Because the most time consuming item is the letter (see below) from the State Historic Preservation Officer (SHPO), grantees are encouraged to contact the SHPO **as early as possible**.

Question #1: Is the property located within designated coastal barrier resources?

Threshold: Grantees are **prohibited** by Federal laws (cited below) from using Federal financial assistance for properties in their HCI programs, if the properties are located within designated coastal barriers resources of the Atlantic Ocean, Gulf of Mexico, or the Great Lakes. The Coastal Barrier Resources Act (COBRA), as amended, 16 U.S.C. 3501, is cited in _ 50.4 and 58.6 of HUD environmental regulations. Of the states along the border region, only Texas has designated coastal barrier resources; therefore, only HCI grantees with activities in Texas must comply with COBRA. For all other grantees, the response to this question is "not applicable." [<http://www.fema.gov/nfip/cobra.htm>]

Documentation: Grantees are to select either **A**, **B**, or **C** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

- A.** The grantee does not propose activities within the state of Texas, therefore, this question is not applicable.
- B.** The grantee proposes activities within the state of Texas, but these activities are within a unit of general local government that does not border the Gulf of Mexico.
- C.** For the grantee whose activities are located within a unit of general local government that borders the Gulf of Mexico, the grantee provides HUD with a letter of finding made by the local planning agency stating that the grantee's proposed property is not located within designated coastal barrier resources by citing the map panel number of the COBRA maps issued by the Department of the Interior or the flood insurance rate maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) on the basis of which the finding was made.

Example: The finding is that the coastal property is not located within designated coastal barrier resources as shown on FIRM map for Cameron County, TX, community-panel number 480101 0005 A, map revised March 18, 1991.

Question #2: Is the property contaminated by toxic chemicals or radioactive materials?

Threshold: It is HUD policy, as described in 50.3(i), that "(1)... all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. (2) HUD environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards..." Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to

sites: (i) listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; (ii) located within 3,000 feet of a toxic or solid waste landfill site; or (iii) with an underground storage tank (which is not a residential fuel tank).

Documentation: Grantees are to select either **A** or **B** for the condition that best describes their property and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a letter of finding made by the local planning agency that the property: (i) is not listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; (ii) is not located within 3,000 feet of a toxic or solid waste landfill site; (iii) does not have an underground storage tank (which is not a residential fuel tank); and (iv) is not known or suspected to be contaminated by toxic chemicals or radioactive materials.

B. The grantee states the property: (i) is listed on an EPA Superfund National Priorities or CERCLA list or equivalent State list; (ii) is located within 3,000 feet of a toxic or solid waste landfill site; (iii) has an underground storage tank other than a residential fuel tank or (iv) is known or suspected to be contaminated by toxic chemicals or radioactive materials. For any of these conditions, the grantee must provide an American Society for Testing Materials (ASTM) Phase I report.

Question #3: Is the property located within a flood hazard area or designated wetland?

Threshold: Projects located within a floodplain and new construction located within a designated wetland are subject to Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) respectively. HUD's implementing regulations at 24 CFR Part 55--Floodplain Management, prescribe measures for protecting floodplains and wetlands. For proposed financial assistance for such activities, including "substantial improvement" (see definition below) of existing single-family properties within a floodplain, HUD will require 30 to 60 days in most cases to perform the required processing.

Assisted new construction located within a **designated wetland** is subject to HUD's decisionmaking process under E.O. 11990.

Assisted property acquisition, repair, rehabilitation, conversion, new construction and project-based leasing located within a floodplain are subject to HUD's decisionmaking process under E.O. 11988. The decisionmaking process does not apply to existing single-family properties proposed for lease or acquisition involving either non-substantial improvement or no improvement as long as the existing property is not located within a floodway or coastal high hazard area.

Under these executive orders, HUD must avoid financial support for covered activities, unless it can demonstrate that there are no practicable alternatives outside the floodplain or wetlands Where

flood-free and wetland-free sites are available within the community or housing market area, these are considered practicable.

Definition: "substantial improvement" for flood hazard purposes is defined in 24 CFR 55.2(b)(8).

Documentation: Grantees are to select **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a letter of finding that the property is not located within the Special Flood Hazard Area or designated wetlands.

B. The grantee provides HUD with a finding that the property is located within the Special Flood Hazard Area and/or designated wetlands.

The response as to whether a property is located within a Special Flood Hazard Area or designated wetlands can be made as follows. To make a wetlands finding, the grantee would use maps issued by the Department of the Interior (DOI) for the National Inventory of Wetlands. To make a floodplain finding, the grantee would use maps issued by the Federal Emergency Management Agency (FEMA) for the National Flood Insurance Program. These findings should cite the map panel number of the official maps issued by DOI and FEMA on the basis of which the findings were made.

[<http://www.fema.gov/nfip/fmapinfo.htm>]

Question #4: Is the property within an area requiring flood insurance protection?

Threshold: The Flood Disaster Protection Act of 1973 as amended requires that property owners purchase flood insurance for buildings located within Special Flood Hazard Areas (SFHA), when Federal financial assistance is used to acquire, repair, improve, or construct a building.

Duration of Flood Insurance Coverage. The statutory period for flood insurance coverage may extend beyond project completion. For loans, loan insurance or loan guarantees, flood insurance coverage must be continued for the term of the loan. For grants and other non-loan forms of financial assistance, flood insurance coverage must be continued for the life of the building irrespective of the transfer of ownership.

Dollar Amount of Flood Insurance Coverage. For loans, loan insurance or guarantees, the amount of flood insurance coverage need not exceed the outstanding principal balance of the loan. For grants and other non-loan forms of financial assistance, the amount of flood insurance coverage must be at least equal to the maximum limit of coverage made available by the Act with respect to the particular type of building involved (i.e., Single Family, Other Residential, Non-Residential, or Small Business), or the development or project cost, whichever is less. The development or project cost is the total cost for

acquiring, constructing, repairing or improving the building. This cost covers both the Federally-assisted and the non-Federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishings. If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures, or furnishings, the **total** cost of that item must also be covered by flood insurance.

Proof of Purchase of Flood Insurance Protection. Once HUD has approved a specific SFHA property, the grantee's file for any SFHA property shall contain "proof of purchase" of flood insurance protection. The standard documentation for compliance is the Policy Declarations form issued by the National Flood Insurance Program (NFIP) or by any property insurance company offering coverage under NFIP. The insured has its insurer automatically forward to the grantee, in the same manner as to the insured, an information copy of the Policy Declarations form, which is used to verify compliance. The grantee's responsibility ceases in cases where a mortgage loan is approved requiring flood insurance as condition of loan approval by a lender (other than the grantee), whose responsibility is to assure flood insurance coverage for the loan. [<http://www.fema.gov/nfip/info.htm>]

Documentation: Grantees are to estimate the amount and period of flood insurance coverage that is to be made a condition of approval of the SFHA building and report the option selected on the format (see **Appendix B**).

Question #5: Is the property located within an airport runway clear zone at a civil airport or, within a clear zone or accident potential zone at a military airfield?

Threshold: HUD policy as described in 24 CFR 51, Subpart D, is that assistance for construction or major rehabilitation of any real property located on a clear zone site is prohibited for a project to be frequently used or occupied by people. For properties located within 3,000 feet of a civil airport or military airfield, the airport operator should make a finding stating whether or not the property is located within a runway clear zone for civil airports or a clear zone or accident potential zone at a military airfield.

For a project not to be frequently used or occupied by people, HUD assistance may be approved only when written assurances are provided to HUD by the airport operator to the effect that there are no plans to purchase the land involved with such facilities as part of a Runway Clear Zone or Clear Zone acquisition program.

Definition: Rehabilitation (including conversion) is "major" or "substantial" when the estimated cost of the work is 75 percent or more of the property value after rehabilitation or, in the case of property in an Accident Potential Zone, when the work changes the use of the facility to a use that is not generally consistent with the recommendations in the Department of Defense "Land Use Compatibility Guidelines for Accident Potential Zones," significantly increases the density or number of people at the site, or introduces explosive, flammable or toxic materials to the area (24 CFR 51.302(b)(1),(2), and (3)).

HUD financial assistance in a clear zone is allowed for existing properties proposed for acquisition or lease (24 CFR 51.302(c)) with or without minor rehabilitation or repair. Upon HUD approval for acquisition of a property in a clear zone, (a) HUD will give advanced written notice to the prospective property buyer in accord with 24 CFR 51.303(a)(3); and (b) a copy of the HUD notice signed by the prospective property buyer will be placed in the property file (for a sample notice, see **Appendix E**). The written notice informs the prospective property buyer of: (i) the potential hazards from airplane accidents which studies have shown more likely to occur within clear zones than in other areas around the airport/airfield; and (ii) the potential acquisition by airport or airfield operators, who may wish to purchase the property at some point in the future as part of a clear zone acquisition program.

For properties located within the accident potential zone (APZ), HUD shall determine whether the use of the property is generally consistent with Department of Defense "Land Use Compatibility Guidelines for Accident Potential Zones."

Documentation: Grantees are to select either **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee states that the property is not located within 3,000 feet of a civil airport or military airfield.

B. For properties located within 3,000 feet of a civil airport or military airfield, the grantee provides HUD with a finding from the airport operator stating whether or not the property is located within a runway clear zone at a civil airport, or a clear zone or accident potential zone at a military airfield. For properties that are located within a runway clear zone or a clear zone or accident potential zone, grantees who propose to rehabilitate such a property provide HUD with estimates of: (i) the cost of the proposed rehabilitation, and (ii) the property value after completion of the rehabilitation.

Question #6: Is the property: listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, a historic district; or a property whose area of potential effect includes a historic district or property?

Threshold: Historic properties and districts are subject by law to special protection and historic preservation processing which HUD must perform to comply with the regulations Of the Advisory Council on Historic Preservation (36 CFR part 800). Grantees seeking information from the State Historic Preservation Officer (SHPO) need to allow sufficient time to obtain the information from the SHPO. Grantees may wish to make special arrangements with the SHPO for rapid review of the proposed property where practicable. For properties determined to be historic properties or for actions impacting a historic property, HUD will require 30 to 90 days in most cases to perform the required processing. If the action will have adverse effects on historic properties, HUD will request the grantee to select another property.

Documentation: Grantees are to select one of the following options that best describes the condition of their project and report the option selected on the format (see **Appendix B**).

A. The grantee proposes financial assistance for rehabilitation, conversion, or construction of the property and provides HUD with a SHPO's finding that the proposed rehabilitation, conversion, or construction:

1. Will have no effect on historic properties; **or**
2. Will have an effect on historic properties not considered adverse.

B. The grantee proposes financial assistance for rehabilitation, conversion, or construction of the property and provides HUD with a SHPO's finding that the proposed rehabilitation, conversion, or construction will have an adverse effect on historic properties.

C. The grantee provides HUD with a copy of a letter from the SHPO stating any reasons for not being able to provide the grantee with the requested information and finding.

The grantee should inform HUD, if it gets no response at all from the SHPO.

Question #7: Is the property located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature?

Threshold: Properties that are located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature are subject to HUD safety standards (24 CFR 51, Subpart C). However, under the HCI program, these standards would apply **only** if the grantees propose: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units. In the case of tanks containing common liquid fuels, the requirement for an acceptable separation distance (ASD) calculation only applies to storage tanks that have a capacity of more than 100 gallons.

Documentation: Grantees are to select the condition that best describes the project and report the option selected on the format (see **Appendix B**).

A. The proposed project does **not** include: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; or (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units.

B. The proposed project includes: (i) construction of a building; (ii) conversion of a nonresidential land use to a residential land use including making an uninhabitable building habitable; or (iii) rehabilitation that increases the density of a residential structure by

increasing the number of dwelling or rooming units; and the grantee provides HUD a finding by a qualified data source that the grantee's proposed property is not located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature by citing data used and the maps used.

C. The grantee proposes: (i) construction of a building; (ii) conversion of a non-residential land use to a residential land use including making an uninhabitable building habitable; **or** (iii) rehabilitation that increases the density of a residential structure by increasing the number of dwelling or rooming units; and the grantee provides HUD a finding by a qualified data source stating: (1) that the grantee's proposed property is located within the immediate vicinity of hazardous industrial operations handling fuel or chemicals of an explosive or flammable nature; (2) the type and scale of such hazardous operations; (3) the distance of such operations from the proposed property; (4) a preliminary calculation of the acceptable separation distance (ASD) between such operations and the proposed property; and (5) a recommendation as to whether it is safe to use the property in accord with 24 CFR Part 51, Subpart C.

Question #8: Is the site noise-impacted?

Threshold: For new construction which is to occur in high noise areas (i.e. exceeding 65 decibels), grantees shall incorporate noise attenuation features to the extent required by HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR part 51. Approvals in a "Normally Unacceptable" noise zone require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels.

For new construction and major rehabilitation, locations with day-night average noise levels above 75 decibels have unacceptable noise exposure. Noise attenuation measures in these locations require the approval of the Assistant Secretary for Community Planning and Development, and acceptance of such locations normally requires an Environmental Impact Statement.

For major rehabilitation projects in the "Normally Unacceptable" and "Unacceptable" noise zones, HUD actively seeks to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level of exterior noise exposure. In "Unacceptable" noise zones, HUD strongly encourages conversion of noise-exposed sites to land uses compatible with the high noise levels.

Documentation: Grantees are to select **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a finding made by a qualified data source stating that

the property proposed by the grantee for new construction, major rehabilitation, or conversion activity in its HCI program is not located within: (i) 1,000 feet of a major noise source, road, or highway; (ii) 3,000 feet of a railroad; or (iii) 1 mile of a civil or 5 miles of a military airfield.

B. The grantee provides HUD with a finding made by a qualified data source stating whether the property is located within a "Normally Unacceptable" or "Unacceptable" noise zone, and if so: (i) stating that the plans for the property proposed by the grantee for new construction or conversion activity in its HCI program incorporate noise attenuation features in accord with HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR part 51; and (ii) providing HUD with plans and a statement of the anticipated interior noise levels.

Question #9: Is the project consistent with the State's coastal zone management?

Threshold: Only for new construction, conversion, major rehabilitation, and substantial improvement activities in the states of Texas and California does the Coastal Zone Management (CZM) authority apply. Projects which can affect the coastal zone must be carried out in a manner consistent with the approved State coastal zone management program under Sec. 307 of the Coastal Zone Management Act of 1972, as amended.

Documentation: Grantees are to select either **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee states that its project is not located within a coastal zone, as defined by the State's coastal Zone Management Plan, or is located in the states of Arizona or New Mexico.

B. For a grantee whose project is located within a coastal zone, the grantee provides HUD with a finding made by the State CZM agency that the project proposed by the grantee is consistent with the approved State coastal zone management program.

Question #10: Does the project affect a sole source aquifer?

Threshold: The Safe Drinking Water Act of 1974 requires protection of drinking water systems which are the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health. Development which can affect aquifers designated by the Environmental Protection Agency (EPA) must be reviewed for impact on such designated aquifer sources. Only for new construction and conversion activities does the sole source aquifer (SSA) authority apply. SSA information is available from the local planning agency, but is also listed on the homepage of the EPA Office of Ground Water and Drinking Water at (<http://www.epa.gov/OGWDW/ssanp.html>).

Documentation: Grantees are to select **A** or **B** for the condition that best describes their property and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a finding stating that the grantee's proposed property is not located on nor does it affect a sole source aquifer designated by EPA.

B. For the grantee who proposes new construction or conversion activities that are located on or may affect any sole source aquifer designated by the EPA, the grantee identifies the aquifer and provides HUD with an explanation of the effect on the aquifer from a qualified data source, and/or a copy of any comments on the proposed property that the grantee has received from the EPA Regional Office as well as from any State or local agency with jurisdiction for protecting the drinking water system.

Question #11: Does the property affect endangered species?

Threshold: The Endangered Species Act (ESA) of 1973 requires protection of listed or proposed endangered or threatened species or critical habitats. Projects which can affect listed endangered or threatened species or critical habitats require consultation with the Department of Interior in compliance with the procedure of Section 7 of the ESA. Only for new construction and conversion activities does the ESP authority apply.

Documentation: Grantees are to select **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. If the grantee proposes new construction or conversion activities, the grantee provides HUD with a finding made by a qualified data source that the project is not likely to affect any listed or proposed endangered or threatened species or critical habitat.

The finding shall indicate whether the project is located within a critical habitat, and if so, explain why the project is not likely to affect the species or habitat.

B. If grantee proposes new construction or conversion activities that are likely to affect listed or proposed endangered or threatened species or critical habitat, the grantee provides HUD with a statement from a qualified data source explaining the likely effect, and/or a finding made by the Fish and Wildlife Service of the Department of the Interior that states as acceptable, the proposed mitigation that the grantee must provide to protect any affected endangered species or critical habitat.

Question #12: Does the project affect listed wild and scenic rivers?

Threshold: HCI assisted activities are subject to the requirements of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). New construction and the acquisition of undeveloped land for water resources projects (i.e., water and sewer lines, water retention ponds, etc.) which are proposed in areas within one mile of a listed wild and scenic river have the potential for impacting this natural resource.

[<http://www.nps.gov/rivers/>]

Documentation: The grantee should select **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a finding made by a qualified data source which states that the project is not located within one mile of a listed wild and scenic river or the project will not have an effect upon the natural, free flowing or scenic qualities of such a river.

B. The project is located within one mile of a listed wild and scenic river and the Department of the Interior, National Park Service, indicates that the project, as proposed, will have an effect upon the natural, free flowing or scenic qualities of the river.

Question #13: Does the project affect prime and unique farmland, or other farmland of statewide or local importance?

Threshold: A finding of compliance with the requirements of the Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) must be made for assisted new construction activities and the acquisition of undeveloped land.

Documentation: Grantees are to select either **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a finding from the local planning agency which states that the proposed project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the Department of Agriculture, Natural Resources Conservation Service (NRCS), or the project site includes prime farmland but is located in an area committed to urban development or water storage.

B. The proposed project site includes farmland and the grantee has requested an evaluation of land type from NRCS using form AD 1006 and has provided the resultant rating to HUD.

Question #14:- Is the project within a "non-attainment" or "maintenance" area identified in the air quality State Implementation Plan (SIP)?

Threshold: The Clean Air Act (42 U.S.C. 7401 et seq.) prohibits federal assistance to projects that are not in conformance with the SIP. New construction and conversion, which are located in "non-attainment" or "maintenance" areas as determined by the EPA may need to be modified or mitigation measures developed and implemented to conform with the SIP.

Documentation: Grantees should select **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a finding which states that the project is not located in a non-attainment" or "maintenance" area of the SIP.

B. The proposed project is located in a "non-attainment" or "maintenance" area and a written determination by HUD will be made whether the project is in conformance with the SIP.

Question #15: Is the project located in a neighborhood or community where the proposed action is likely to raise environmental justice issues?

Threshold: Executive Order 12898--Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, applies in low-income or minority neighborhoods where the grantee proposes the acquisition of housing, the acquisition of land for development, and new construction. Environmental justice issues may include, but are not limited to new, continued or historically disproportionate potential for high and adverse human health and environmental effects on minority or low-income populations. The grantee will need to determine if the site or neighborhood suffers from disproportionate adverse health and environmental effects relative to the community at large. [<http://es.epa.gov/oeca/oejbut.htm>]

Documentation: Grantees should select **A** or **B** for the condition that best describes their project and report the option selected on the format (see **Appendix B**).

A. The grantee provides HUD with a finding that the project is not likely to raise environmental justice issues.

B. The project is likely to raise environmental justice issues and has the potential for new or continued disproportionately high and adverse human health and environmental effects on minority or low-income populations. The grantee must consider mitigation or avoidance of adverse impacts from the project to the extent practicable.

Question #16: Does the grantee propose: (i) acquisition of land for development of more than four one-to-four family dwellings, or of five or more units of housing where the housing sites are 2,000 feet or less apart; (ii) infrastructure; (iii) new construction other than for residential activities excluded under 50.20(a)(3); (iv) major rehabilitation of existing structures in accordance with 50.20(a)(2) that involves any of the following conditions: (a) in the case of residential buildings, an increase in the unit density of more than 20 percent; (b) changes in land use (from non-residential to residential or from residential to non-residential); or (c) estimated cost of rehabilitation that is 75 percent or more of the total estimated cost of replacement after rehabilitation; or (v) any other activity not categorically excluded under 50.20(a)?

Threshold: For the above activities, an environmental assessment is required for compliance

with the National Environmental Policy Act (NEPA) and the implementing regulations of the Council on Environmental Quality. It is the policy of the Department to reject proposals which have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality.

Documentation: If the answer to question #16 is "Yes," grantees are to provide information on any adverse environmental impacts that affect the project or that the project would create. Grantees are to identify any adverse impacts in terms of: (i) impact on unique natural features or areas; (ii) site suitability, access, and compatibility with surrounding development; (iii) soil stability, erosion, and drainage; (iv) nuisances and hazards (natural and built); (v) availability of water supply and sanitary sewers; (vi) availability of solid waste disposal; (vii) availability of schools, parks, recreation, and social services; (viii) availability of emergency health care, fire and police services; and (ix) availability of commercial/retail and public transportation serving such proposed development. Grantees are to identify any significant impacts to the human environment. Report data and findings on the format (see **Appendix B**).

FORMAT

THRESHOLD REVIEW FOR PROPOSED ACTIVITIES
HUD COLONIAS INITIATIVE (HCI) PROGRAM

HCI Grantee's Name: _____
HCI Program Number: _____
Format Preparer's Name: _____
Phone Number: _____
FAX Number: _____
E-mail Address: _____

A. Describe the project. Indicate the number of housing units to be assisted, and/or acreage to be developed. Include street address, if applicable.

B. Is a map attached identifying the location of the proposed project within the community?
Indicate: Yes____, or No____.

Are photographs of the property and adjacent properties attached?
Indicate: Yes____, or No____.

C. Describe the present and proposed use of the property:
Present: _____
Proposed: _____

D. Which of the following activities are being proposed?

- (1) Lease of existing structures _____
- (2) Acquisition of existing structures _____
- (3) Repair or minor rehabilitation of existing structures _____
- (4) Major rehabilitation of existing structures _____
- (5) New construction or conversion (including demolition) _____
- (6) Infrastructure improvements _____
- (7) Acquisition of undeveloped land for future development _____

E. Report the repair/rehabilitation costs and related property values, only if conversion, repair, minor or major rehabilitation is being proposed.

- (1) Property value before repair/rehab \$ _____
- (2) Repair/rehab costs (estimate) \$ _____
- (3) Property value after repair/rehab \$ _____

F. Are there any physical or environmental conditions that are or may indicate a significant impact on the human environment? Indicate: No _____, Uncertain _____, or Yes _____.
If the answer is "uncertain" or "yes," describe the conditions and impacts.

G. Respond to these questions:

- (1) For leasing of existing structures: Complete questions #1 through 3 only.
- (2) For acquisition of existing structures: Complete questions #1 through 5 only.
- (3) For repair or minor rehabilitation of existing structures: Complete questions #1 through 6 only.
- (4) For acquisition of land for development of less than four one-to-four family dwellings or of five or more units of housing where the housing sites are 2,000 feet or more apart:
Complete questions #1 through 15 only.
- (5) Complete questions #1 through 16 for new construction, acquisition of undeveloped land, conversion from one land use to another, or major rehabilitation (unless otherwise noted below) of existing buildings.

QUESTIONS:

#1 Is the property located within designated coastal barrier resources?

Indicate A____, B____, or C_____.

Documentation:

#2 Is the property contaminated by toxic chemicals or radioactive materials?

Indicate A ____ or B ____

Documentation:

#3 Is the property located within a flood hazard area or designated wetland?

Indicate A ____ or B ____.

Documentation:

#4 Is the property within an area requiring flood insurance protection?

Indicate: Yes ____ or No _____. If the answer is "yes,"

Estimate coverage amount of flood insurance \$ _____

Indicate coverage period:

Year in which flood insurance policy is to start: _____

Year in which flood insurance policy is to end: _____

#5 Is the property located within an airport runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield?

Indicate A ____ or B ____

Documentation:

#6 Is the property listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, a historic district; or is a property whose area of potential effect includes a historic district or property?

Indicate A ____, B ____ or C ____

Documentation:

#7 Is the property located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature?

Indicate A ____, B ____, or C ____

Documentation:

#8 Is the site noise-impacted?

Indicate A ____ or B ____

Documentation:

#9 Is the project consistent with the State's coastal zone management?

Indicate A ____ or B ____

Documentation:

#10 Does the project affect a sole source aquifer?

Indicate A ____ or B ____

Documentation:

#11 Does the project affect endangered species?

Indicate A ____ or B ____

Documentation:

#12 Does the project affect listed wild and scenic rivers?

Indicate A ____ or B ____

Documentation:

#13 Does the project affect prime and unique farmland, or other farmland of statewide or local significance?

Indicate A ____ or B ____

Documentation:

#14 Is the project within a "non-attainment" area and not in conformance with the State Implementation Plan for clean air?

Indicate A ____ or B ____

Documentation:

#15 Is the project located in a neighborhood or community where the proposed action is likely to raise environmental justice issues?

Indicate A ____ or B ____

Documentation:

#16 Does the grantee propose: (i) acquisition of land for development of more than four one-to-four family dwellings, or of five or more units of housing where the housing sites are 2,000 feet or less apart; (ii) infrastructure; (iii) new construction other than for residential activities excluded under 50.20(a)(3); (iv) major rehabilitation of existing structures in accordance with 50.20(a)(2) that involves any of the following conditions: (a) in the case of residential buildings, an increase in the unit density of more than 20 percent; (b) changes in land use (from non-residential to residential or from residential to non-residential); or (c) estimated cost of rehabilitation that is 75 percent or more of the total estimated cost of replacement after rehabilitation; or (v) any other activity not categorically excluded under 50.20(a)?

Indicate: Yes ____ or No _____. If the answer is "yes," indicate which of the above activities (i), (ii), (iii), (iv) and/or (v) is proposed: _____.

Documentation: For compliance with the National Environmental Policy Act, report data needed for the HUD's preparation of the environmental assessment. Submit data on separate sheets with this Format. Indicate any potential impacts of the proposed project on the surrounding area as well as the potential impact of the surrounding area on the proposed project. Identify any adverse and beneficial impacts in terms of:

- (1) Unique natural features and areas
- (2) Site suitability, access, and compatibility with surrounding development
- (3) Soil stability, erosion, and drainage
- (4) Nuisances and hazards (both natural and built)
- (5) Water supply/sanitary sewers
- (6) Solid waste disposal
- (7) Schools, parks, recreation, and social services
- (8) Emergency health care, fire and police services
- (9) Commercial/retail and transportation
- (10) Other: (i) project's conformance with the locality's comprehensive plans and zoning; (ii) proposed displacement of residents or structures by the project; and (iii) energy conservation measures proposed for the project.

Appendix C

HUD Field Office CPD Director and Staff Responsibilities

The Field Office CPD Division Director and staff shall:

- (1) provide adequate outreach to the HCI grantee and hold an upfront meeting with the grantee to explain the environmental review responsibilities and to explain how the grantee may obtain the environmental information that is to be supplied to the field CPD Division Director;
- (2) in accordance with 50.32, use any information supplied by the HCI grantee or the grantee's contractor, provided HUD independently evaluates the information, so that HUD will be responsible for its accuracy, supplements the information (if necessary) to conform to the requirements of Part 50, and prepares the environmental finding;
- (3) in accordance with 50.22, establish, as necessary, commitments for environmental management and monitoring;
- (4) complete the environmental review in accordance with Part 50 and upon satisfactory completion, document the Department's compliance on the "Sample Field Notes Checklist for HUD Form-4128 (April 10, 1997)" and complete HUD form-4128--"Environmental Assessment and Compliance Findings for the Related Laws"; attach to form-4128 the information provided by the HCI grantee or other sources used for completing the environmental analysis and findings; and obtain the signature of CPD Division Director as the HUD Approving Official. These documents serve as the environmental review record, which HUD field office must maintain and make available upon request.

On HUD form-4128, complete both Part A (Compliance Findings for 50.4 Related Laws) **and** Part B (Environmental/Program Factors) for HUD approval of all actions **except** those categorically excluded from the NEPA assessment.

Complete only Part A (Compliance Findings for 50.4 Related Laws) for HUD approval of the categorically excluded activities **(a)** through **(d)** listed below. However, any categorical exclusion having the potential for significant impact because of extraordinary circumstances under 50.20(b) also requires completion of both Part A (Compliance Findings for 50.4 Related Laws) **and** Part B (Environmental/Program Factors).

(a) special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities;

(b) an individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site;

(c) minor rehabilitation of existing structures (50.20(a)(2)) when the following conditions are met: (i) in the case of residential buildings, the unit density is not, changed more than 20 percent; (ii) no changes are proposed in land use (from non-residential to residential or from residential to non-residential); and (iii) the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; or

(d) acquisition or disposition of, or equity loans on, an existing structure; and

(5) have prepared the written approval letter or other typed letter, if approval is not warranted (see form letters in **Appendix D**) for the CPD Division Director's signature and dispatch the written notification to the HCI grantee.

Appendix D

REPLY TO HCI GRANTEES REGARDING HUD APPROVAL

[Type on HUD Field Office stationery]

Dear Grantee:

We have reviewed the information that you supplied to us in your letter of (month, day, year) requesting environmental processing under the HUD Colonias Initiative (HCI) Program. Our determination for the property (or neighborhood area) listed in your submission is as follows:

[Type the appropriate option]

[Option 1: HUD approval]

The following property (or neighborhood area) listed in your submission does not exceed any of the thresholds that activate the Federal environmental laws and authorities. Therefore HUD approves the use of this property (or neighborhood area) in your local HCI program. You may proceed to commit or expend HCI grant funds and non-HUD funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction for this property (or properties within this neighborhood area).

[Option 2: HUD environmental approval with special conditions]

The following property (or neighborhood area) listed in your submission exceeds one or more of the thresholds that activate the Federal environmental laws and authorities, and it was necessary for us to perform a compliance review. We approve the use of this property (or neighborhood area) in your local HCI program. You may proceed to commit or expend HCI grant funds and non-HUD funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction for this property (or properties within this neighborhood area) under the following specified conditions: (explain the specified conditions).

[Option 3: HUD request for additional information to perform either the threshold determination or the compliance review, or both]

The following property (or neighborhood area) appears to exceed one or more of the

thresholds that activate, the Federal environmental laws and authorities. Therefore, (we request that you provide the following necessary information so that we may perform the threshold determination) or (a compliance review is required and significantly more time will be needed for us to complete this review). You are prohibited from committing or expending HUD and non-HUD funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction with respect to any eligible property (or neighborhood area), until HUD approval is received for the specific property (or neighborhood area). If you wish to remove this property (or neighborhood area) from further consideration, please call us as soon as possible. For this property (or neighborhood area), the following action is required (explain action required).

[Option 4: HUD disapproval]

The following property (or neighborhood area) exceeds one or more of the thresholds that activate the Federal environmental laws and authorities, and for the following reasons HUD disapproves the use of this property (or neighborhood area) in your local HCI program. You are prohibited from committing or extending HCI funds to undertake property acquisition, rehabilitation, conversion, leasing, repair or construction with respect to this property (or neighborhood area). For this property (or neighborhood area), the specific reasons for this disapproval are the following: (explain reasons).

For further information regarding this review, please
phone _____, at _____ or
e-mail: _____.

Yours truly,

Director
Community Planning and Development Division

cc:
Field HCI Program Coordinator
Field Environmental Officer

Appendix E

NOTICE TO PROSPECTIVE BUYERS OF PROPERTIES LOCATED IN RUNWAY CLEAR ZONES AND CLEAR ZONES

[In accordance with 24 CFR 51.303(a)(3), this Notice must be given to anyone interested in using HUD assistance, subsidy or insurance to buy an existing property which is located in either a Runway Clear Zone 1/ at a civil airport or a Clear Zone at a military installation. HUD staff should fill out the area shown in parentheses below. **The original signed copy of the Notice to Prospective Buyers must be maintained as part of the HUD project file on this action.]**

The property which you are interested in purchasing at (street address, city, state, zip code) is located in the Runway Clear Zone/Clear Zone for (provide the name of the airport/airfield, city, state).

Studies have shown that if an aircraft accident were to occur it is more likely to occur within the Runway Clear Zone/Clear Zone than in other areas around the airport/airfield. Please note that we are not discussing the chances that an accident will occur, only where one is mostly likely to occur.

You should also be aware that the airport/airfield operator may wish to purchase the property at some point in the future as part of a clear zone acquisition program. Such programs have been underway for many years at airports and airfields across the country. We cannot predict if or when this might happen since it is a function of many factors, particularly the availability of funds, but it is a possibility.

We want to bring this information to your attention. Your signature on the space below indicates that you are now aware that the property you are interested in purchasing is located in a Runway Clear Zone/Clear Zone.

Signature of prospective buyer

Date

Typed or printed name of prospective buyer

1/ Also referred to as runway protection zone.